

Legislative Council Panel on Commerce and Industry

Review of Certain Provisions of the Copyright Ordinance

INTRODUCTION

We have reviewed certain provisions of the Copyright Ordinance after wide public consultation. This paper invites Members' views on our proposals on the way forward.

BACKGROUND

2. In April 2001, we implemented new legislation that introduced criminal liability for end users in possession of copyright infringing articles in business. The public generally felt that the scope of the new criminal law was too wide. In June 2001, with the approval of the Legislative Council, we suspended the new law except as it applied to computer programs, movies, television dramas, and musical recordings. The suspension will expire on 31 July 2002. We undertook to formulate a long-term solution after wide public consultation.

3. Subsequently, we issued a consultation document for a two-month consultation period ending on 31 December 2001. This document covers the key issue of end-user criminal liability as well as some other issues raised during the public debate last year. We have received a total of 254 submissions from nearly all major interested parties and some members of the public. A summary of their views is at Annex A. A list of the organizations that have made submissions is at Annex B. We have also consulted this Panel and held formal and informal discussions with various stakeholder groups.

4. Having regard to the results of the consultation, we have formulated our proposals on the way forward in the paragraphs below.

PROPOSALS

Criminal provisions related to End-user Piracy in Business

5. The original aim of the new legislation that came into effect last April was to deter rampant piracy in computer software and audio-visual products. But the new law applied also to photocopying of printed works as well as downloading of information from the Internet.

To some extent this had the effect of impairing the dissemination of information in enterprises and teaching in schools.

6. With the enactment of the Copyright (Suspension of Amendments) Ordinance 2001 in last June, end-user criminal liability exists only for four categories of work, namely, computer programs, movies, television dramas and musical recordings. This is widely accepted by the community and no implementation problems have arisen so far. We believe that it has struck the right balance between the protection of intellectual property rights and the practical needs of teaching and for information dissemination. We propose that the arrangement be made permanent.

7. Under the current law, employees who knowingly use, say, pirated computer software in their work may be liable to criminal sanction. To address the concern that criminal sanction is too harsh for them, who are in a weak position to bargain with employers for fear of losing their job, we propose that employees should not be criminally liable if their employers have supplied the pirated copies of works. However, criminal sanction against employees who knowingly deal in (e.g. trade or sell) pirated copies of copyright works will remain. We will need to draft the law carefully to ensure that this proposed exemption will not become a loophole.

8. To limit further the scope of the end-user criminal liability, we propose to remove the phrase “in connection with” from the expression “for the purpose of, in the course of, or in connection with, any trade or business” where this appears in the Copyright Ordinance. This will include deleting the phrase from the relevant civil provisions in the Copyright Ordinance as well.

9. We have considered whether to remove criminal liability for the use of pirated copies of works belonging to the four categories in paragraph 6 above for non-commercial purposes, such as the use of pirated computer software in a welfare agency or a non-profit-making school. In the past, end-user piracy in such types of organization had been quite rampant. We are concerned that relaxing the criminal law might lead to the revival of such practices. On balance, we propose that no change be made.

10. The book publishing industry has expressed serious concern about illicit reproduction of books by photocopying shops for commercial purposes. We will consider tightening up criminal provisions in the current law and reviewing enforcement procedures to combat such illegal

activities more effectively.

Permitted Acts for Educational Purposes

11. Notwithstanding the removal of end-user criminal liability for photocopying printed works and downloading information from the Internet, civil liability continues to exist. There is a need to clarify the scope of certain statutory permitted acts (i.e. exemptions from civil liability) for educational purposes. This will provide greater certainty to teachers in photocopying and downloading works for classroom use.

12. To provide greater flexibility and more comprehensive guidance, we propose to adopt a non-statutory approach in clarifying the meaning of the expression 'reasonable extent' in sections 41 and 45 of the Copyright Ordinance. We further propose to delete the word 'passage' in section 45.

13. The Director of Intellectual Property will convene working groups involving interested parties for the development of non-statutory guidelines for -

- (a) photocopying printed works¹; and
- (b) reproducing works in digital format, such as multimedia works, and uploading works to and downloading from the Internet.

14. We propose to extend the existing permitted acts in sections 41 and 45 of the Copyright Ordinance related to copying of works to allow for uploading an insubstantial part of a work to the school Intranet for limited access within the school. Like other permitted acts, the act must fulfill the condition that it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the copyright owner. For example, uploading an entire textbook to the school Intranet will not be permitted.

15. We further propose to remove the existing restriction that the permitted acts under sections 44 and 45 of the Copyright Ordinance will not be permitted if there are relevant licensing schemes granting authorizations for the works concerned.

¹ The publishing industry has already proposed some guidelines that may be used as a basis for discussion with the educational sector.

16. We have reviewed the fair dealing provisions in the Copyright Ordinance vis-à-vis the US provisions on fair use². Instead of confining the fair-dealing exemption to private study and research, criticism, review and news reporting, we propose to extend the scope of our fair dealing provisions along the line of the US open-ended approach. This will allow, say, certain special acts for teaching or personal use³ which fall outside the ambit of exemptions in the current law, to be treated as fair dealing. We will provide that any such act must not conflict with a normal exploitation of the work by the copyright owner, or unreasonably prejudice his legitimate interests.

Permitted Acts for Visually Impaired Persons

17. We propose to introduce a statutory exemption for the making of specialized formats of printed works by non-profit-making bodies exclusively for persons with a ‘print disability’. Print disability means a disability that inhibits a person from reading printed copyright works in its original format because of visual impairment or inability to hold or manipulate books or focus or move one's eyes.

18. We further propose to remove the existing restriction in section 83 of the Copyright Ordinance that the permitted act of making sub-titled television broadcasts or cable programmes for people with a physical or mental disability will not be permitted if there are relevant licensing schemes granting authorizations.

Permitted Acts related to Free Public Showing or Playing of Broadcasts or Cable Programmes

19. Hotels, restaurants, shopping malls and retailers argue that they should be exempted from paying copyright royalties to owners of underlying works (such as music and lyrics) when playing free radio or television broadcasts in their venue. However, we cannot go for across-the-board exemption, as this will be in breach of our international obligations. A similar exemption in the US legislation has been ruled by

² The US Copyright Act provides that the fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

³ For example, it will be fair dealing for a person to make one photocopy of a newspaper article which records an interview given by that person to the newspaper; or for a teacher to adapt a small part of a drama for teaching purpose.

the World Trade Organization to be violating the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

20. Having regard to overseas practices and the TRIPS Agreement, we believe that there may be a case to provide exemptions for the following places -

- (a) guest rooms of hotels; and
- (b) public transport provided that the broadcast is played predominantly for the driver to have access to public information. For example, radio music in taxis will be exempted, but music in television programmes on buses, trains and vessels will not.

21. We also propose to extend the existing exemption in section 81 of the Copyright Ordinance to cover all public places where broadcasts or cable programmes are shown or played except where goods or services are supplied at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcasts or programmes.

Parallel Importation of Copyright Works other than Computer Software

22. The local film and music industries strongly oppose relaxing the current restrictions on parallel importation. They claim that any relaxation would substantially affect their business and discourage new investment in the industries.

23. The issue of parallel importation had been thoroughly and heatedly debated before the enactment of the Copyright Ordinance in 1997. Given the strong opposition of the local film and music industries, we believe that now is not a good time to become embroiled once again in a heated controversy over this issue. After all, the matter was not a major bone of contention in last year's public debate. We propose that the status quo be maintained.

24. However, we propose to remove the criminal and civil liability for importation and possession of parallel-imported goods by end users. For example, the use of parallel imported music CDs in a karaoke will no longer attract criminal or civil liability.

Unauthorized Reception of Subscription Television Programmes

25. Having assessed the current situation and submissions received during the consultation, we consider that legislative measures should be enhanced to deter fraudulent reception of subscription television in Hong Kong. We do not condone such acts.

26. Pirated viewing of subscription television is a problem existing in many jurisdictions, even after end-user criminal liability has been imposed. In drawing up our proposal, we note the reservations about imposing end-user criminal liability raised in some submissions. The considerations are whether the severity of the wrongdoing warrants criminal sanction and the possible invasion of privacy by enforcement agents. We also believe that digitisation should make pirated viewing increasingly difficult as service providers can adopt measures to render unauthorized decoders useless (e.g. by programming at the server end). It is likely that pirated viewing will be significantly reduced when the subscription service has been digitised. Whether fraudulent reception remains a widespread problem after full digitisation can only be assessed at that time. We will keep the situation under close review.

27. We propose to introduce civil remedy against fraudulent reception of subscription television. We will also encourage operators to digitise their services as soon as practicable. If it proves that fraudulent reception of subscription television is still prevalent after digitisation, the Government will take prompt action to introduce criminal sanction against end users. We consider that this gradual approach, involving efforts from both operators and the Government will be more acceptable to the public.

28. Based on the submissions received, there is general support for introducing criminal sanction against those receiving subscription television fraudulently for public display in the course of business (e.g. at pubs). We propose to introduce both civil remedy and criminal sanction against the possession of unauthorised decoders for commercial purposes.

Licensing Bodies

29. Compulsory registration of licensing bodies has considerable

technical and resource implications while the benefits will be relatively small. We propose that such an arrangement should not be introduced for the time being. Instead, we will encourage all major licensing bodies to be registered under the existing voluntary scheme, as well as to develop voluntary codes of practice including a complaint handling mechanism. We will review in a year's time if any compulsory arrangement needs to be introduced.

30. We consider that the Copyright Tribunal should not be replaced by an arbitration system, as the high legal cost cannot be avoided even under such a system. We will further explore options to address the issue of high legal cost associated with the proceedings of the Copyright Tribunal.

31. While we do not agree with the perception of some copyright users that the Copyright Tribunal is biased towards copyright owners, we propose to expand the membership of the Tribunal so that it represents an even wider cross-section of the community.

WAY FORWARD

32. As it will take time to prepare the necessary legislative amendments to take forward the proposals above, and in view of the expiry of the Copyright (Suspension of Amendments) Ordinance 2001 on 31 July, we intend to concentrate first on issues related to end-user criminal liability with a view to introducing a bill to the Legislative Council before July. If examination of this bill cannot be completed before the suspension expires, we will propose to extend the suspension for six months, until end January 2003.

33. As regards amending legislation in relation to the other issues, we intend to bring them forward in the 2002-03 legislative session. Information Technology and Broadcasting Bureau will separately deal with amendment legislation for issues related to fraudulent reception of subscription television programmes.

Chapter 1 - Criminal Provisions related to End-user Piracy

I. Summary of Views

- (i) 112 submissions have expressed views on issues in Chapter 1;
- (ii) copyright owners hold the view that criminal sanction should apply to the use of pirated works in business activities of a non-profit-making nature. The welfare and educational sectors consider that criminal sanction should not apply to non-profit-making activities. Views are divided on this issue among the business sector;
- (iii) most respondents who are not copyright owners consider that employees using pirated works supplied by employers should not be criminally liable;
- (iv) views are divided on whether end-user criminal liability should apply to all copyright works or only those afflicted by rampant piracy;
- (v) there is strong support for exempting from criminal liability acts such as photocopying a newspaper article, recording a television news report, or printing a picture downloaded from a website, for archival purpose; and
- (vi) most support the removal of “in connection with” from “for the purpose of, in the course of, or in connection with, any trade or business”.

II Details

(A) *Whether criminal sanction should apply to the possession of an infringing copy of a copyright work in ‘business’ activities of a non-profit-making nature*

(a) *Support*

- (i) all should abide by the law; and
- (ii) it would be difficult to define non-profit-making activities.

(b) *Against*

- (i) criminal prosecution should only target at those who possess an infringing copy with a view to selling it for a profit; and
- (ii) since the primary objective of copyright protection is to promote scientific

and artistic development, non-profit-making activities such as education or library works should be exempted from criminal sanctions.

(B) *Whether employees in possession of an infringing copy supplied by the employer for use in business should be criminally liable*

(a) Support

- (i) both employees and employers should abide by the law; and
- (ii) if employees were not liable, employers may tend to shift the burden to employees and thus reduce the deterrent effect of the law.

(b) Against

- (i) employees are often not in a position to refuse to use the infringing material provided by employers; and
- (ii) the law should target at those who assist in the selling of pirated copies and not employees in general.

(C) *Whether end-user criminal liability should apply only to copyright works afflicted by rampant piracy*

(a) Support

- (i) criminal sanction is a very serious legal tool that should be used sparingly to address clearly defined problems of piracy and not impede normal operation of business; and
- (ii) the current arrangements of applying criminal provisions to copyright works afflicted by rampant piracy have been well received by the public.

(b) Against

- (i) all copyright works should be equally protected; and
- (ii) the works that are being afflicted by rampant piracy may be difficult to determine and may change over time.

(D) *Whether certain acts of the end-user which infringe copyright but which do not give the end-user any commercial advantage or private financial gain, should be exempted from criminal liability*

(a) Support

- (i) acts of “fair use” should be exempted from criminal liability;
- (ii) to apply criminal sanction to acts such as a company making copies of newspaper or magazine cuttings or radio/TV programmes concerning itself is disproportionate to the scale of the infringement involved; and
- (iii) civil remedies for such acts should suffice.

(b) *Against*

- (i) many infringing acts which do not result in commercial gain or private financial advantage are still detrimental to the rights holders;
- (ii) fair use provisions rather than exceptions to infringement should be used to balance the interests of copyright owners and users; and
- (iii) compulsory licensing regimes with equitable remuneration should be introduced.

(E) *Whether the phrase “in connection with” in the expression “for the purpose of, in the course of, or in connection with, any trade or business” should be removed*

(a) *Support*

- (i) the phrase “for the purpose of and in the course of any trade or business” should be wide enough to cover trade or business uses.

(b) *Against*

- (i) the use of infringing copies would still conflict with a normal exploitation of the copyright work.

(F) *Other views*

- (i) mere possession of an infringing copy by end users should not be criminalized; and
- (ii) criminal liability should only apply in serious infringement cases, having regard to the number of copies made and its purposes, the degree of knowledge and the impact on the interests of copyright owners.

Chapter 2 - Permitted Acts for Educational Purposes

I Summary of Views

- (i) 69 submissions have expressed views on issues in Chapter 2;
- (ii) a majority favour a non-statutory approach in clarifying the meaning of “to a reasonable extent” and “passage”;
- (iii) most respondents other than copyright owners agree that recording and reprographic copying by educational establishments for educational/instruction purposes permitted under sections 44 and 45 of the Copyright Ordinance should be permitted no matter licences under licensing schemes are available or not. The publishing industry objects; and
- (iv) most respondents who are not copyright owners support introducing a new permitted act to facilitate the uploading of copyright works to a school Intranet. Copyright owners object.

II Details

(A) *Whether statutory or non-statutory approach should be adopted for clarification of the meaning of “to a reasonable extent” and “passages” in sections 41 and 45 of the Copyright Ordinance, and if a statutory approach is to be adopted, what element should be covered in the definitions*

(a) *Support a statutory approach*

- (i) the statutory approach provides certainty;
- (ii) the non-statutory approach is not practical as negotiation between education sector and copyright owners is costly and the agreed guidelines will be difficult to enforce as they lack legal backing;
- (iii) the criteria for “to a reasonable extent” should include the percentage of the work copied; the number of copies; the number of pages; that the copying meets the tests of brevity, spontaneity and cumulative effect in the US model; and
- (iv) the scope of “passage” should be a specific ratio each for literary work, dramatic work and music work.

(b) *Support a non-statutory approach*

- (i) the non-statutory approach is more flexible and is easy to cover details and accommodate changes and adjustment in response to technological developments and changing environment;
 - (ii) the statutory approach of defining free copying will affect the investment confidence of publishers; and
 - (iii) the criteria in the guidelines should include the percentage of work copied; the number of copies; whether a third party is permitted to re-distribute for educational purpose copyright materials copied from a second party; the condition that the copying does not deny the copyright holders of real opportunities to sell multiple copies of their products, etc.
- (B) *Whether recording or reprographic copying made by educational establishments for educational/instruction purposes permitted under sections 44 and 45 of the Copyright Ordinance should be permitted no matter licences under licensing schemes are available or not***
- (a) *Support*
 - (i) any exemption or fair dealing should apply whether or not a licensing scheme is in force;
 - (ii) the restriction places schools in an extremely weak position vis-à-vis the licensing bodies;
 - (iii) as the permitted acts are already subject to the condition that they do not conflict with a normal exploitation of the work by the copyright owner or unreasonably prejudice his legitimate interests, there is no need to put up another hurdle; and
 - (iv) as licensing schemes are only agreements between private parties, they should not override provisions in the law.
 - (b) *Against / have reservation*
 - (i) the proposal unfairly tips the balance of power to end users and renders meaningless the very notion of copyright licensing; and
 - (ii) the carve-out should be retained as it creates an incentive for rightsholders and users to develop licensing schemes that provide legal certainty and are tailor-made to their respective needs.
- (C) *Whether a new permitted act should be provided under the Copyright Ordinance to facilitate the uploading of copyright works to a school***

INTRANET for access within the school

(a) Support

- (i) the proposal is in line with the popularity of digital communication; and
- (ii) the form in which a copyright work exists and the media through which the work is expressed/used should not affect the nature and legality of the acts in the school context.

(b) Against / have reservation

- (i) in the information age, the licensing of educational materials over a network constitutes increasingly the normal exploitation of a work by authors and publishers; and
- (ii) an overly broad exception would violate Hong Kong's international obligations.

(D) Other views

- (i) the terms “to a reasonable extent” and “passage” should not be clarified or quantified as a statutory definition would be inflexible and a numerical definition may suit some instances but inappropriate for others;
- (ii) if the copying is for educational purposes, the requirement for “to a reasonable extent” and “passage” should be deleted. The encouragement and facilitation of dissemination of information is the element of civilization and should be placed above the protection of intellectual property;
- (iii) a working group should be set up to formulate guidelines relating to educational use of the Internet and to monitor the changing digital environment and the new information technologies with a view to advising the Government on matters relating to copyright law, fair dealing and collective licensing; and
- (iv) the permitted acts for educational establishments should be extended to cover educational activities in a company training programme, or in non-profit-making bodies.

Chapter 3 - Permitted Acts for Visually Impaired Persons

I Summary of Views

- (i) 36 submissions have expressed views on issues in Chapter 3;
- (ii) an overwhelming majority support the provision of a new permitted act for the transcribing of works in the printed format into Braille, large-print, talking or other specialized formats by non-profit-making bodies for the exclusive use of visually impaired persons; some suggest deletion of the condition “where no such transcriptions are commercially available in Hong Kong within a reasonable time or at a reasonable price”;
- (iii) some suggest that the permitted act should cover persons with all types of disability;
- (iv) the majority agree that the new permitted act in (ii) above and the existing permitted act for designated non-profit-making bodies to make sub-titled or otherwise modified copies of television broadcasts or cable programme for people with a physical or mental disability should be permitted no matter a licensing scheme is available or not.

II Details

- (A) *Whether a new permitted act should be provided for the transcribing of works in the printed format into Braille, large-print, talking or other specialized formats by non-profit-making bodies for the exclusive use of visually impaired persons where no such transcriptions are commercially available in Hong Kong within a reasonable time or at a reasonable price*
 - (a) *Support*
 - (i) it facilitates equal opportunities for access to information by the disabled;
 - (ii) conditions should be set to avoid abuse, e.g. exclusion of electronic copies; exclusion of adaptation other than as required to enable access by the disabled; that a copyright owner's rights are not exhausted by virtue of the permitted act; and
 - (iii) some consider that the condition “where no such transcriptions are commercially available in Hong Kong within a reasonable time or at a reasonable price” is ambiguous, onerous and would impede equal access to information by the people with disabilities; a few others want to retain the condition as copyright owners should be able to derive a reasonable income from such works.

- (c) *Against / have reservation*
- (i) visually impaired persons should respect the rights of copyright owners;
- (ii) non-profit-making bodies should apply for permissions from copyright owners for the transcription; and
- (iii) talking or other specialized formats should not be allowed as they are already commercially available.
- (B) *Whether the new permitted act and the existing permitted act for designated non-profit-making bodies to make sub-titled or otherwise modified copies of television broadcasts or cable programme for people with a physical or mental disability should be permitted no matter a licensing scheme is available or not***
- (a) *Support*
- (i) permitted acts should apply whether or not a licensing scheme is in force.
- (b) *Against / have reservation*
- (i) voluntary arrangements between rights holders and the users should be given preference over government regulation.
- (C) *Other views***
- (i) permitted acts should cover all accessible formats and adaptations required by all persons with disabilities and be extended beyond education to other fields and activities as well.

Chapter 4 : Permitted Acts Related to Free Public Showing or Playing of Broadcast or Cable Programme

I Summary of Views

- (i) 70 submissions have expressed views on issues in Chapter 4;
- (ii) copyright user groups support the extension of the statutory exemption in section 81 of the Copyright Ordinance to cover all underlying copyright works included in broadcasts or cable programme. Copyright owners of music and lyric represented by licensing bodies oppose the extension; and
- (iii) most copyright users support extending the exemption to cover all public places where broadcasts or cable programmes are shown or played except where goods or services are supplied at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcasts or programmes. Copyright owners object.

II Details

(A) *Whether the statutory exemption in section 81 of the Copyright Ordinance should be extended to cover all underlying copyright works included in broadcasts or cable programmes*

(a) *Support*

- (i) the existing carve-out of underlying works is an anomaly;
- (ii) when licensing their works to broadcasters or cable programme service providers, copyright holders should be aware that their works would be accessible to the general public by way of broadcasts or cable programmes and thus reflect this in the licence fee;
- (iii) copyright works (musical works and lyrics) are often performed in shopping malls when the public is in the course of purchasing goods. It has no relevance to the purchase; and
- (iv) the general use of musical works, sound recordings and films, broadcasts and cable programmes without charging admission fees (e.g. in hotel lobbies and shopping arcades) should not be subject to copyright royalty.

(b) *Against / have reservation*

- (i) broadcasts, cable programmes and sound recordings are derivative works whereas original musical works and lyrics are primary works. It is not

unreasonable for a higher level of protection to be accorded to primary works in order to encourage intellectual creativity;

- (ii) when granting licences to broadcasters, it is within the contemplation of authors and composers of music that their works would be received by the general public at home, but it is not their intention that their works would be subsequently exploited in third party business activities;
- (iii) the fact that music is performed by turning on the television cannot nullify the value of music brought to commercial premises. Whether or not admission fee is charged is a commercial decision and should not be the criteria in determining whether royalty could be charged;
- (iv) the right to broadcast and the right to perform in public are two separate rights. As such, it would not be fair for broadcasters to be charged for the subsequent public performance;
- (v) if the exemption were introduced, commercial premises might choose to perform music by turning on radio or TV music, thus resulting in huge loss of royalty to copyright owners;
- (vi) Extension of the existing exemption would be inconsistent with Hong Kong's international obligation; and
- (vii) the World Trade Organisation has ruled that a similar US exemption is in breach of the relevant international convention and agreement.

(B) Whether the exemption in section 81 of the Copyright Ordinance should be extended to cover all public places where the broadcast or cable programme is shown or played except where goods or services are supplied at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme

(a) Support

- (i) the showing of a television broadcast to customers in a restaurant, the provision of a television set in a hotel room for use by guests or the playing of a radio programme in a taxi with passengers should not warrant any form of royalty as such acts do not conflict with a normal exploitation of the relevant works by the right holders or unreasonably prejudice their legitimate interests.

(b) Against / have reservation

- (i) the proposed test in paragraph 4.9(b) of the Consultation Document is vague,

imprecise and subject to varying interpretation and possibly abuse by copyright users; and

- (ii) the exemption would cause income reduction to the relevant copyright holders and have detrimental effects on the livelihood of composers and authors.

Chapter 5 - Parallel Importation of Copyright Works other than Computer Software

I Summary of views

- (i) 114 submissions have expressed views on issues in Chapter 5;
- (ii) a majority support the removal of civil liability and criminal sanction against parallel importation of and subsequent dealing in all types of copyright work. The music, film and publishing industries object;
- (iii) there is support for reducing the current 18-month threshold if there should continue to be criminal sanction against parallel importation of and subsequent dealing in some types of copyright work; and
- (iv) a majority favor the removal of civil liability and criminal sanction imposed on end-users of parallel imported copies of copyright works in business.

II Details

(A) *Whether the civil liability and criminal sanction against parallel importation of and subsequent dealing in all types of copyright work should be removed, and whether there should be any exception*

(a) *Support*

- (i) it is against public interest to place restrictions on parallel imports;
- (ii) the removal is in line with Hong Kong's free-market philosophy and in step with the growing popularity of purchases through the Internet;
- (iii) the removal would increase competition and the availability of products in the market, resulting in more choices and lower prices for consumers;
- (iv) it is illogical to allow parallel imports under the new Trade Marks Ordinance but impose restrictions under the copyright law.

(b) *Against/have reservation*

- (i) the existing restrictions represent an acceptable compromise and balance of interests for the copyright owners, licensees and the general public;
- (ii) copyright owners should have the right to exploit their works by allowing price differences in different markets;

- (iii) the liberalization would discourage investment;
- (iv) countries with successful music and film industries regulate parallel importation;
- (v) parallel importation is an unfair competition as it allows parallel importers to exploit the marketing efforts of the exclusive distributor; and
- (vi) as pirated products can be disguised as genuine parallel imported products, it will pose an enforcement problem.

(B) If there should continue to be criminal sanction against parallel importation of and subsequent dealing in some types of copyright work, whether the current 18-month threshold should be reduced

(a) Support

- (i) The period should be reduced as the life cycle of a product has shortened due to the popularity of Internet and e-commerce.

(b) Against / have reservation

- (i) there is no justification to reduce the threshold as the development of the Internet and e-commerce is not relevant to the film distribution business.

(C) Whether the civil liability and criminal sanction imposed on end-users of parallel imported copies of copyright works in business should be removed

(a) Support

- (i) restriction of parallel importation should be dealt with at importers' side;
- (ii) it is difficult for end-users to distinguish parallel imported products from genuine products; and
- (iii) enforcement against end-user liabilities is difficult, costly and ineffective.

(b) Against / have reservation

- (i) no specific view has been expressed.

Chapter 6 - Unauthorized Reception of Subscription Television Programmes

I Summary of Views

- (i) 50 submissions have expressed views on issues in Chapter 6;
- (ii) some support the introduction of criminal sanction against fraudulent reception of subscription television programmes for private and domestic purposes as it is a stronger deterrent. Many others consider that criminal sanction is too harsh and the enforcement actions would be intrusive;
- (iii) there is strong support for the introduction of civil remedy against fraudulent reception of subscription television programmes; and
- (iv) there is strong support for the introduction of criminal sanction and civil remedy against the possession of an unauthorized decoder for commercial purposes.

II Details

(A) *Whether criminal sanction against fraudulent reception of subscription television programmes should be introduced*

(a) *Support*

- (i) civil remedy alone is not effective as unauthorized reception is widespread and rampant;
- (ii) unauthorized reception amounts to theft and is analogous to illegal abstraction of electricity;
- (iii) technology is not a solution to the problem;
- (iv) collection of evidence by service operators could be difficult and dangerous;
- (v) existing legislation which criminalises the supply, manufacturing and trading of unauthorized decoders is not adequate as they are supplied from sources outside Hong Kong; and
- (vi) fraudulent reception is prohibited in many jurisdictions and Hong Kong is lagging behind the international standard in this regard.

(b) *Against / have reservation*

- (i) criminal sanction against end-users is too harsh;

- (ii) civil remedy is sufficient as a deterrent;
- (iii) advanced encryption and digital transmission should solve the problem;
- (iv) enforcement would entail the use of intrusive powers of entry; and
- (v) protection against access to a service is the job of the service provider and not the government.

(B) Whether civil remedy against fraudulent reception of subscription television programmes should be introduced

(a) Support

- (i) civil remedy is a sufficient deterrent.

(b) Against / have reservation

- (i) it is up to the service providers to protect their own television signals.

(C) Whether criminal sanction and civil remedy against the possession of an unauthorized decoder for commercial purposes should be introduced:

(a) Support

- (i) using unauthorized decoders for commercial purposes amounts to theft of commercial information; and
- (ii) targeting commercial users is a more acceptable approach than criminalising fraudulent reception in domestic premises.

(b) Against / have reservation

- (i) civil remedy alone is sufficient.

Chapter 7 - Licensing Bodies

I Summary of Views

- (i) 63 submissions have expressed views on issues in chapter 7;
- (ii) a majority oppose replacing Copyright Tribunal with an arbitration system to adjudicate disputes between copyright users and licensing bodies; and
- (iii) many support mandatory registration of the licensing bodies and their publication of scales of royalty charges to promote transparency. Others consider that the measures will be excessive interference with the market and may conflict with Hong Kong's international obligations. The substantial resources required are not commensurate with the benefit gained.

II Details

(A) *Whether the Copyright Tribunal should be replaced with an arbitration system to adjudicate disputes between copyright users and licensing bodies*

(a) *Support an arbitration system*

- (i) the Copyright Tribunal is biased towards copyright owners;
- (ii) the arbitration system allows parties to choose their arbitrators and hence a better chance to reach a fair and balanced conclusion; and
- (iii) the arbitration system is simple and less expensive.

(b) *Support the retention of Copyright Tribunal*

- (i) the substantial legal costs involved with the Copyright Tribunal's proceedings cannot be avoided under an arbitration system;
- (ii) the Copyright Tribunal is in line with the international practice and is equipped with expert knowledge to deal with the complicated copyright licensing issues; and
- (iii) the Copyright Tribunal is not biased towards copyright owners as members of the Tribunal have a variety of background and there are procedures to handle conflict of interest.

(B) *Whether Licensing bodies should be mandated to be registered and to publish their scales of royalty charges*

(a) *Support*

- (i) mandatory requirements ensure better transparency; and
- (ii) a mandatory scheme provides official recognition to a licensing body and facilitates copyright users to have access to these bodies.

(b) *Against*

- (i) mandatory registration and publication of scales of royalties are excessive interference with the market and may be in conflict with Hong Kong's international obligations of not subjecting the exercise of copyright by right holder to any formality; and
- (ii) the substantial resources needed for a mandatory regime are not commensurate with its potential benefits;

(C) *Other views*

- (i) introduce a summary procedure for the proceedings where no legal representation is allowed for cases involving less than a certain amount of royalties;
- (ii) licensing bodies should develop Code of Conduct to promote transparency and establish a complaint handling mechanism; and
- (iii) amend the law to allow licensing bodies to publicize scales of royalty charges by web sites display.

**Review of Certain Provisions of Copyright Ordinance
List of Organizations that Have Made Submissions**

- There are a total of 126 submissions from 140 organizations as listed below. The rest of the 254 submissions are from individual members of the public.

- 1. European Association for the Protection of Encrypted Works and Services
- 2. Allen & Overy
- 3. AOL Time Warner
- 4. Asean Resources Holdings Ltd.
- 5. Asia Television Ltd.
- 6. Asian Patent Attorneys Association Hong Kong Group
- 7. Association of American Publishers, Inc.
- 8. Association of Better Business & Tourism Services
- 9. Association of Commercial Television in Europe
- 10. Association of Heads of Primary School of the Hong Kong Council of the Church of Christ in China, The
- 11. Association of Heads of Secondary School of the Hong Kong Council of the Church of Christ in China, The
- 12. Association of Heads of Secondary Schools
- 13. Association of Hong Kong Chinese Middle School
- 14. Australasian Performing Right Association Ltd.
- 15. Blockbuster Hong Kong Ltd.
- 16. Business Software Alliance Hong Kong
- 17. Cable & Satellite Broadcasting Association of Asia
- 18. CAPUT Schools Council
- 19. Chinese General Chamber of Commerce, The
- 20. Chinese Manufacturers' Association of Hong Kong, The
- 21. Columbia Tristar Film Distributors International, Inc.
- 22. Composers and Authors Society of Hong Kong Ltd.¹
- 23. Concern Group of Music Copyright Ordinance
- 24. Conference of Sheng Kung Hui Secondary School Heads, The
- 25. Consumer Council
- 26. Copyright Agency Ltd.

¹ The submission from the Composers and Authors Society of Hong Kong Ltd. contains 591 letters in standard format.

27. Democratic Alliance for Betterment of Hong Kong
28. EDKO Films Ltd.
29. EDKO Video Ltd.
30. Education and Manpower Bureau
31. Education Department
32. Equal Opportunities Commission
33. Era Films (HK) Ltd.
34. Era Home Entertainment Ltd.
35. Federation of Hong Kong Hotel Owners Ltd., The
36. Federation of Hong Kong Industries
37. First Touch Holding Ltd.
38. Gala Film Distribution Ltd.
39. Galaxy Satellite Broadcasting Ltd.
40. GESAC, European Grouping of Societies of Authors and Composers
41. Golden Sun Film Co. Ltd.
42. Hong Kong Academy for Performing Arts, The
43. Hong Kong Association for Computer Education, The
44. Hong Kong Association of Banks, The
45. Hong Kong Bar Association
46. Hong Kong Blind Union
47. Hong Kong Cable Television Ltd.
48. Hong Kong Catholic Diocesan Schools Council
49. Hong Kong Chinese Importers' & Exporters' Association, The
50. Hong Kong Christian Council
51. Hong Kong Christian Service
52. Hong Kong Composers' Guild
53. Hong Kong Computer Society
54. Hong Kong Construction Association Ltd., The
55. Hong Kong Copyright Licensing Association, The
56. Hong Kong Council of Social Service, The
57. Hong Kong Direct Subsidy Scheme Schools Council
58. Hong Kong Federation of Education Workers Ltd.
59. Hong Kong General Chamber of Commerce
60. Hong Kong Hotels Association
61. Hong Kong Institute of Architects

62. Hong Kong Institute of Professional Photographers, The
63. Hong Kong Institute of Trade Mark Practitioners, The
64. Hong Kong Institute of Vocational Education
65. Hong Kong Kowloon & New Territories Motion Picture Industry Association Ltd.

66. Hong Kong Library Association
67. Hong Kong Medical Association, The
68. Hong Kong Newsclipping Industry Working Committee
69. Hong Kong Prevocational Council
70. Hong Kong Private Schools Association
71. Hong Kong Professional Teachers' Union, The
72. Hong Kong Progressive Alliance, The
73. Hong Kong Public Relations Professionals' Association Ltd.
74. Hong Kong Record Merchants Association Ltd.
75. Hong Kong Reprographic Rights Licensing Society
76. Hong Kong Retail Management Association
77. Hong Kong Retinitis Pigmentosa Society
78. Hong Kong Society for the Blind, The
79. Hong Kong Society of Accountants
80. Hong Kong Special Schools Council
81. Hong Kong Subsidized Primary Schools Council
82. Hong Kong Subsidized Secondary Schools Council
83. Hong Kong Teacher-Librarians' Association
84. Hospital Authority
85. HUCOM Task Force on Reprographic Rights Licensing
86. Hutchison Whampoa Properties Ltd.
87. Independent Commission Against Corruption
88. International Association of Scientific Technical & Medical Publishers
89. International Confederation of Societies of Authors and Composers
90. International Federation of Reproduction Rights Organisations
91. International Federation of the Phonographic Industry (Hong Kong Group) Ltd.
92. International Publishers Association
93. Irish Music Rights Organisation Ltd.
94. Joint University Libraries Advisory Committee
95. JPMorgan Chase Bank
96. Karaoke Requirement Concern Group
97. Keenmind International Ltd.
98. Law Society of Hong Kong, The
99. Li Po Chun United World College of Hong Kong
100. Liberal Party
101. Modern Educational Research Society Ltd.
102. Motion Picture Association
103. Movie Producers And Distributors Association of Hong Kong Ltd.
104. Movieland Holdings Ltd.
105. Music Authors' Copyright Protection (MACP) Berhad

106. Music Publishers Association of Hong Kong Ltd.
107. National University of Singapore
108. Newspaper Society of Hong Kong, The
109. Octopus Cards Ltd.
110. Office of Dr Law Chi Kwong Legislative Councilor
111. Open University of Hong Kong, The
112. Pacific Century Cyber Works (PCCW-HKT) Ltd.
113. Panasia Film Ltd.
114. Peak Association, The
115. Performing Right Society Ltd.
116. Phonographic Performance (South East Asia) Ltd.
117. Pilot Publishing Co. Ltd.
118. Po Leung Kuk
119. Publishers Association, The
120. Rich Worth Investment Ltd.
121. Saint's Alp (International) Co., Ltd.
122. Satellite Television Rentals Ltd.
123. Seasonal Film Corporation
124. Sociedad General de Autores y Editores, Spain
125. Society of Composers, Authors and Music Publishers of Canada
126. Society of Publishers in Asia, The
127. Star Group Ltd.
128. Sun Hung Kai Properties Ltd.
129. Tangs Entertainment Pro. Co.
130. Television Broadcasts Ltd.
131. TEOSTO, Finnish Composers' Copyright Society
132. Twentieth Century Fox Hong Kong Inc.
133. Union of Heads of Aided Primary Schools of Hong Kong
134. United Christian College
135. Vocational Training Council
136. Walt Disney Studios Asia Pacific Limited, The
137. Wharf Estates Management Co. Ltd.
138. Witman Publishing Co. (H.K.) Ltd.
139. Wong Tai Sin District Council
140. 廣明苑業主監察組